

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

PREPARED FOOD PHOTOS, INC.  
f/k/a ADLIFE MARKETING &  
COMMUNICATIONS CO., INC.  
Plaintiff,

v.

WNEEDAVACATION.COM, LLC  
Defendant.

Case No.: 1:23-cv-11085-RGS

**DEFENDANT WNEEDAVACATION.COM, LLC'S ANSWER AND  
AFFIRMATIVE DEFENSES TO COMPLAINT**

Defendant WNEEDAVACATION.COM, LLC ("WNV"), by and through counsel, hereby submits its Answer and Affirmative Defenses, and states the following:

**THE PARTIES**

1. Without knowledge or information sufficient to form a belief about the truth of the allegation, therefore denied.
2. Admit.

**JURISDICTION AND VENUE**

3. Admit.
4. Admit.

5. Admit.

## **FACTS**

### **I. Plaintiff's Business**

6. Without knowledge or information sufficient to form a belief about the truth of the allegation, therefore denied.

7. Without knowledge or information sufficient to form a belief about the truth of the allegation, therefore denied.

8. Without knowledge or information sufficient to form a belief about the truth of the allegation, therefore denied.

9. Without knowledge or information sufficient to form a belief about the truth of the allegation, therefore denied.

10. Without knowledge or information sufficient to form a belief about the truth of the allegation, therefore denied.

### **II. The Work at Issue in this Lawsuit**

11. Without knowledge or information sufficient to form a belief about the truth of the allegation, therefore denied.

12. Without knowledge or information sufficient to form a belief about the truth of the allegation, therefore denied.

13. Without knowledge or information sufficient to form a belief about the truth of the allegation, therefore denied.

### **III. Defendant's Activities**

14. Deny.

15. Admit.

16. Admit that the screenshot embedded in the Complaint was published on April 11, 2016 on Defendant's website (before Plaintiff's copyright registration of the Work). Deny that the image is the Work at issue.

17. Admit that "Exhibit B" is a correct copy of a screenshot of WNV's website. To the extent that the allegations in Paragraph 17 characterize said screenshot, the actual, complete, and accurate contents of the screenshot speak for themselves, and any characterizations thereof are denied.

18. Deny.

19. Deny.

20. Deny.

21. Deny.

22. Deny.

### **COUNT I – COPYRIGHT INFRINGEMENT**

23. WNV incorporates by reference its responses to paragraphs 1-22.

24. Without knowledge or information sufficient to form a belief about the truth of the allegation, therefore denied.

25. Without knowledge or information sufficient to form a belief about the truth

of the allegation, therefore denied.

26. Without knowledge or information sufficient to form a belief about the truth of the allegation, therefore denied.

27. Deny.

28. Deny.

29. Deny.

30. Deny.

31. Deny.

### **PRAYER FOR RELIEF**

Defendant, WNV, denies that Plaintiff is entitled to the relief requested in the Complaint.

### **AFFIRMATIVE DEFENSES**

#### **First Affirmative Defense**

Plaintiff's claim for copyright infringement is barred in whole or in part on the grounds that WNV's alleged use of the Work is a fair use of the work under Section 107 of the Copyright Act (17 U.S.C. §107).

#### **Second Affirmative Defense**

Certain of WNV's alleged infringing conduct occurred more than three years before the commencement of this action. Plaintiff's claim for copyright

infringement is therefore barred in whole or in part by the statute of limitations prescribed in 17 U.S.C. §507(b), precluding claims and purported damages commenced more than three years after the claim accrues.

### **Third Affirmative Defense**

Plaintiff's claim for copyright infringement is barred because Plaintiff did not own the copyright interest in the Work or possess a valid exclusive license to be deemed an owner of the copyright interest in the Work, and therefore the Plaintiff lacks standing to assert any of the claims in the Complaint.

### **Fourth Affirmative Defense**

Plaintiff's claim for copyright infringement is barred because Plaintiff failed to enforce its purported copyright interest in the Work and therefore abandoned its rights.

### **Fifth Affirmative Defense**

Any relief sought by Plaintiff is barred by the doctrine of laches.

WHEREFORE, Defendant, WNV, respectfully requests that the Court:

A. Enter judgment in WNV's favor on Plaintiff's claim, dismissing the claim with prejudice.

B. Award WNV its reasonable costs and fees, including attorneys' fees pursuant to 17 U.S.C. §505.

C. Grant WNV such other and further relief as the Court may deem just and proper.

Respectfully submitted this 31<sup>st</sup> day of July, 2023.

/s/ Adrienne C. Love

Adrienne C. Love (FBN 21835)  
Stearns Weaver Miller Weissler  
Alhadeff & Sitterson, P.A.  
106 East College Ave., Suite 700  
Tallahassee, FL 32301  
850-580-7200  
alove@stearnsweaver.com

John C. Kanaga, BBO# 569083  
Laraja and Kanaga, P.C.  
46 S. Orleans Road  
P.O. Box 236  
Orleans, MA 02653  
508-255-5500  
FAX 508-255-8844  
jck@capelaw.com

Attorneys for Defendant WNV

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was filed with the Court using the CM/ECF system, on July 31, 2023, which will send an electronic copy of such filing to all counsel of record.

/s/Adrienne C. Love

Adrienne C. Love